

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

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| In re Application of | : | Customer Number: 46320 |
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| Marcy HOWERTER, et al. | : | Confirmation Number: 2446 |
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| Application No.: 10/734,556 | : | Group Art Unit: 2192 |
| | : | |
| Filed: December 12, 2003 | : | Examiner: J. Rutten |
| | : | |
| For: REGISTRY DRIVEN REAL-TIME CONFIGURATION OF RESOURCE MANAGEMENT OBJECTS FOR DEPLOYMENT IN AN INSTANCE OF AN INTEGRATED SOLUTIONS CONSOLE | | |

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Reply Brief is submitted under 37 C.F.R. § 41.41 in response to the EXAMINER'S ANSWER dated February 7, 2008.

The Examiner's response to Appellants' arguments submitted in the Appeal Brief of November 13, 2007, raises additional issues and underscores the factual and legal shortcomings in the Examiner's rejection. In response, Appellants rely upon the arguments presented in the Appeal Brief of November 13, 2007, and the arguments set forth below.

REMARKS

Rejection under 35 U.S.C. § 102

On pages 5-7 of the Appeal Brief, Appellants presented arguments that the Examiner has failed to establish that Komine identically discloses the claimed "instances of an integrated solutions console." Initially, the Examiner responded as follows on page 13 of the Examiner's Answer:

Appellants essentially argue that the limitation of an integrated solutions console is not disclosed by Komine. As pointed out in the 12/29/06 Non- final Rejection (see item 5 on page 5) and also in the 6/12/07 Final Rejection (see item 3 on page 3 and item 15 on page 9), this limitation is disclosed by Komine at column 4 lines 49-53 (e.g. "client applications") in view of Fig. 1 elements 11 and 100.

The Examiner's assertion, however, is conclusory and does not set forth any substantial evidence that would lead one having ordinary skill in the art to recognize that the object management system 100 or client application 11 of Komine identically discloses the claimed "instances of an integrated solutions console."

In the last full paragraph on page 13 of the Examiner's Answer, the Examiner further asserted the following:

Appellant further argues (see top of page 7) that previous rejections have not provided an explanation regarding how the reference is both reasonable and consistent with Appellant's specification. It should be noted that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In this case, Komine's client applications provide a view of the enterprise at least in reference to performance of resource managers and object managers (further see Komine column 4 lines 63-66: "The message processor 110 accepts operation request messages that the client applications 11 and 12 issue to transact with the RMs 51 to 56, and it passes them to the object manager 130."). As such, it reasonably and consistently corresponds with the discussion of an integrated solutions console provided in the specification. Therefore, Appellants' argument is not persuasive. (emphasis added)

Appellants are entirely unclear how the Examiner is able to assert that "Komine's client applications provide a view of the enterprise at least in reference to performance of resource

managers and object managers" based upon column 4, lines 63-66 of Komine. Regardless of whether the Examiner's assertion is supported, Appellants are unclear as to the relevance of this assertion. Moreover, the underlined portion of the above-reproduced passage is yet another conclusory statement by the Examiner that lacks supportive substantial evidence.

The Examiner yet again fails to provide a claim construction for the phrase "instances of an integrated solutions console" and clearly explain why the Examiner believes Komine identically discloses these teachings. For example, as claimed, the resources objects (which are configured, e.g., in the configuring step) are deployed in the instances of the integrated solutions console. In the statement of the rejection, the Examiner identifies RMs 51-56 as identically disclosing the claimed resource objects. However, referring to Fig. 1, the RMs 51-56 are not deployed in instances of an integrated solutions console, as claimed. Thus, the Examiner has still failed to establish that Komine identically discloses the claimed invention.

On pages 7 and 8 of the Appeal Brief, Appellants argued that the Examiner has failed to indicate the features corresponding to the claimed "corresponding resources in an enterprise domain." Appellants also noted that the Examiner had failed to set forth a proper claim construction for the term "enterprise domain." In responding to these arguments, the Examiner asserted the following in the first full paragraph on page 14 of the Examiner's Answer:

On pages 7-9 of the 11/13/07 Brief, Appellants essentially argue that the reasonable broad interpretation of Komine's "enterprise" as explained in the 6/12/07 Final Rejection (see item 4 on page 3) is not consistent with Appellants' originally filed specification. However, Appellant does not provide any portion of the specification which describes such an enterprise as being contrary to Komine. Without direct support for the term in the specification, Appellants turn to the internet based encyclopedia Wikipedia for support for the term enterprise software: "software which provides business logic support functionality for an organization, typically in commercial organizations, which aims to improve the organization's productivity and efficiency." Komine

provides such enterprise software at least in terms of object management systems, tree managers, object managers, message processors, etc. See at least Fig. 1 and column 2 lines 30-40. Further, Appellants have not provided any arguments that clearly point out any alleged shortcomings of the reference. Therefore, the argument is not persuasive. (emphasis added)

Despite being tasked with setting forth a claim construction for the term "enterprise domain," the Examiner yet again dodges the task. Instead, the Examiner responds by improperly trying to shift the burden to Appellants to explain why the Examiner's assertions are incorrect. The Examiner is burdened with supporting a finding of anticipation as to all of the claimed elements. This burden, however, has not been met.

With regard to the underlined portion of the above-identified passage, the Examiner completely ignores the language of the claim, which recites that the "new resource management object [manages] a corresponding resource in an enterprise domain." At issue is the claimed "corresponding resource in an enterprise domain," to which the Examiner refers to "object management systems, tree managers, object managers, message processors, etc." These alleged "enterprise software" are not being managed by the resource management object (i.e., allegedly disclosed by RMs 51-56). Instead, the RMs 51-56 administer respective management objects (MOs) (see column 4, lines 53-54). Thus, the Examiner is taking alleged teachings as to the object management system 100, tree manager 120, object managers 130, and message processors 110 and improperly associating these alleged teachings to the MOs (i.e., the features being managed by the RMs 51-56) without any factual basis.

In the first full paragraph on page 9 of the Appeal Brief, Appellants argued that the Examiner failed to identify a teaching within Komine that specifically associates a "new resource

management object" with a "corresponding resource." In responding to these arguments, the Examiner asserted the following in the last full paragraph on page 14 of the Examiner's Answer:

The previous rejections have cited Komine column 7 lines 5-7, e.g. "RM7' is to be newly created." Here, RM7 corresponds with a "resource manager" which are at least described in column 4 lines 53-56 ("the RMs 51 to 56 administrate their respective managed objects (MOs)") as managing respective or corresponding resources. Thus, Appellants' argument is not persuasive.

In response to the Examiner's newly cited passage of column 4, lines 53-56, Appellants concede that the RMs manage associated "respective managed objects (MOs)." However, the Examiner has failed to establish that the managed objects disclosed by Komine identically disclose the claimed resource. The objects and resources have different meanings, and the Examiner has not put forth substantial evidence that would support a finding that the teaching of an object identically discloses the claimed resource.

On pages 9 and 10 of the Appeal Brief, Appellants presented arguments as to the Examiner failing to establish that Komine identically disclosing the claimed "consulting a registry of existing resource objects to determine a proper placement for said new resource manage object." In responding to these arguments, the Examiner asserted the following in the paragraph spanning pages 14 and 15 of the Examiner's Answer:

On pages 9-10 of the 11/13/07 Brief, Appellants essentially argue that the Komine reference does not disclose "placement" for a new resource management object. However, Komine discloses placement at least in cited column 7 lines 34-35: "a new record with a relative distinguished name "RM7" is added to the RMIB." "Adding" is interpreted as providing placement.

At the outset, Appellants note that the Examiner yet again provides no substantial evidence that supports a claim construction that permits a finding that "adding" corresponds to the claimed "to determine a proper placement." Instead, the Examiner's analysis is conclusory without factual support.

Notwithstanding the Examiner's factually-unsupported claim construction, the Examiner has still failed to establish that the placement is based upon "consulting a registry of existing resource management." Komine is silent as to how placement of the RM is determined. Thus, the Examiner has failed to establish that Komine teaches this limitation.

On page 10 of the Appeal Brief, Appellants further argued that the Examiner has failed to set forth a claim construction of "maximal hierarchy" and establish that Komine teaches the limitations associated with this term. In responding to these arguments, the Examiner asserted the following in the paragraph spanning pages 14 and 15 of the Examiner's Answer:

Thus, Appellants' argument is not persuasive. Appellant further argues that the "maximal hierarchy" has not been addressed. It is noted that no definition for a "maximal hierarchy" appears in the originally filed specification. In particular, the definition provided on page 10 lines 19-20 of the Brief appears nowhere in the specification. Therefore, reasonable broad interpretation is necessary and has been interpreted as Komine's tree structure (see Fig. 1, element 131, also column 5 lines 62-67, e.g. "tree structure") As such, the argument is not persuasive.

Yet again, the Examiner makes a claim construction that is not supported by substantial evidence. Instead, the Examiner assertion that a maximal hierarchy "has been interpreted as Komine's tree structure" is a factually-unsupported conclusion.

The Examiner's factually-unsupported conclusion notwithstanding, the Examiner has apparently failed to investigate the meaning of the phrase "maximal hierarchy," since if the Examiner did perform such an investigation, the Examiner would have recognized that this phrase is an art-recognized term of art.¹ Since the Examiner has failed to establish a proper

¹ See page 10 of http://sureshotstrategies.com/files/DW_Fundamentals_White_Paper.pdf. See page 6 of <http://ssdi.di.fct.unl.pt/bddw/sumarios/assets/2000-Moody.pdf>.

claim construction for this phrase, and since the Examiner has not established that Komine identically teaches this limitation, the Examiner has failed to establish that Komine teaches this limitation within the meaning of 35 U.S.C. § 102.

On pages 10 and 11 of the Appeal Brief, Appellants argued that the Examiner had failed to specifically identify where Komine identically discloses that the new resource management object is configured for insertion into a maximal hierarchy based upon a determined proper placement. In responding to these arguments, the Examiner asserted the following in the last full paragraph on page 15 of the Examiner's Answer:

On pages 10-11 of the 11/13/07 Brief, Appellants essentially argue that the Komine reference does not disclose configuration of objects based upon a proper placement. This argument was addressed in the 6/12/07 Final Rejection (see item 6 on pages 3-4) which cited Komine column 6 lines 4-18 which describes data items in the RMIB entries, i.e. objects. Such data includes at least "Name of Parent RM." A proper placement of an object includes a determination of a parent RM. The configuration of an object includes providing RMIB data which includes data resulting from a proper placement. Therefore, Appellants' arguments are not persuasive. (emphasis added)

Yet again, the Examiner's analysis ignores the language of the claims. As recited, the new resource object (i.e., allegedly disclosed by RMs) is configured. However, the "RMIB data which includes data resulting from a proper placement" is data residing in database 40, which is separate from the RMs 51-56 (see Fig. 3 of Komine). Thus, the Examiner is relying upon teachings as to the RMIB data (in database 40) being configured to improperly assert that the RMs 51-56 are being configured. Therefore, the Examiner has failed to establish that Komine identically teaches this limitation within the meaning of 35 U.S.C. § 102.

On pages 11 and 12, Appellants presented arguments with regard to several different limitations recited in claim 2 and how the Examiner has failed to establish that these limitations are identically disclosed by Komine. In responding to these arguments, the Examiner asserted the following in the paragraphs spanning pages 15 and 16 of the Examiner's Answer:

On pages 11-12 of the 11/13/07 Brief, Appellants essentially argue that the Komine reference does not disclose "editing a deployment descriptor," and "modifying said registry." As cited registry (e.g. RMIB) containing deployment descriptors (e.g. Fig. 4, "Full Name of RM"). Here, Komine describes modifying tree structure data as contained in the RMIB to reflect changes in the containment relationships of resource managers. A change in these relationships requires editing a deployment descriptor which requires modifying the registry. Thus, Appellants' argument is not persuasive.

At the outset, Appellants note that the Examiner has mischaracterized Appellants' arguments. For example, Appellants noted that the editing and modifying steps, as claimed, are associated with the claimed configuring step, but the Examiner's analysis and cited passages within Komine fail to reflect these relationships. Notwithstanding the Examiner's mischaracterization, the Examiner has only partially addressed Appellants' arguments. Moreover, notably absent from the Examiner's assertions is any citations to Komine in support of the Examiner's analysis. As noted in the Appeal Brief, the Examiner's analysis is silent as to the specific limitations recited in claim 2.

On pages 13 and 14 of the Appeal Brief, Appellants presented arguments as to independent claims 11 and 15. In responding to these arguments, the Examiner asserted the following in the first full paragraph on page 16 of the Examiner's Answer:

On pages 13-14 of the 11/13/07 Brief, Appellants essentially argue that the Komine reference does not disclose that "a position within the maximal hierarchy is selected or that the new resource management object is added to the hierarchy based upon the selected position." This argument is not persuasive. Komine teaches selection of a position and addition based upon the selected position at least in column 7 lines 19-26 and 34-35. These passages describe testing for a parent RM and based upon such tests, adding a new record, i.e. "selecting" and "adding." Thus, Appellants' argument is not persuasive.

As previously noted above, the Examiner provides no substantial evidence that supports a claim construction that supports a finding that "adding" corresponds to the claimed "selecting a position within said maximal expansion of said hierarchical subset." The Examiner's citations are completely silent as to the position.

On pages 14 and 15 of the Appeal Brief, Appellants presented arguments as to independent claim 4. In responding to these arguments, the Examiner asserted the following in the paragraph spanning pages 16 and 17 of the Examiner's Answer:

On pages 14-16 of the 11/13/07 Brief, Appellants essentially argue that Komine provides multiple instances, not a single instance as required by claim 4. In particular, Appellants argue that claim 4 requires that the hierarchical representation is tied to a specific instance of the integrated solutions console. This argument is not persuasive. The plain language of the claim calls for "accessibility through said instance of said integrated solutions console." Komine discloses this at least in column 4 lines 53-56:

While not shown in FIG. 1, the RMs 51 to 56 **administrate** their respective managed objects (MOs), which **provide** the **client applications** 11 and 12 with various processing services on request. [emphasis added]

In this case, a hierarchical representation is "tied" to a specific instance of client application 11. Therefore, the argument is not persuasive.

The Examiner's arguments notwithstanding, the Examiner has failed to establish that the resource management objects are registered for accessibility or that a real-time maximal hierarchy representation of the hierarchy is stored.

For the reasons set forth in the Appeal Brief of November 13, 2007, and for those set forth herein, Appellants respectfully solicit the Honorable Board to reverse the Examiner's rejections under 35 U.S.C. §§ 102, 103.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

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Respectfully submitted,

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